



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 8, 2004

H.R. 3261 **Database and Collections of Information Misappropriation Act**

*As ordered reported by the House Committee on Energy and Commerce
on March 3, 2004*

H.R. 3261 would allow parties who create or maintain information databases to file civil suits in a United States district court against parties who misuse those databases. The bill would require the United States Patent and Trademark Office, the Federal Trade Commission, and the Register of Copyrights to accept and review notices submitted by individuals filing such suits. Under the bill, each agency also would be required to write a report regarding the impact of the law with recommendations for change. CBO estimates that implementing H.R. 3261 would have no significant effect on spending subject to appropriation and would not affect direct spending or revenues.

H.R. 3261 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state laws that protect the collection of information; however, CBO estimates that the resulting costs, if any, would not be significant and would not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

H.R. 3261 would create a new private-sector mandate as defined in UMRA by prohibiting any person from making a substantial part of information in certain databases available to the public in commerce without proper authorization. Currently, certain types of information that may be contained in a database are not protected by copyright law, and such information may not be protected under individual state laws. H.R. 3261 would impose a mandate by creating a federal law of misappropriation that would subject to civil penalties any person who, without authority, makes a substantial portion of the information in a database publicly available. To avoid such penalties, a person must obtain the consent of the database owner through a licensing or similar agreement. The person's ability to obtain a license from the proper authority would depend in part on the potential effects of such a license on competition with the licensor's database products or services. The cost of complying with the mandate would be either the cost of the license or the revenue forgone by not making the information publicly available.

CBO cannot estimate the total cost of the mandate because we do not have enough information to determine the scope and impact of the prohibition against misappropriation of certain databases. While court decisions have identified collections of information that failed to meet the creative expression standard under existing copyright law, those decisions are of limited use in identifying all of the types of collections to which H.R. 3261 could extend protection. Database providers may have been unaware of unauthorized use or, even if aware of such activity, may not have chosen to test their rights in court.

On February 10, 2004, CBO transmitted a cost estimate for H.R. 3261 as ordered reported by the House Committee on the Judiciary on January 21, 2004. The two versions of the legislation are identical, as are the cost estimates.

The CBO staff contacts for this estimate are Melissa E. Zimmerman (for federal costs), Sarah Puro (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.